Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Promotion of Competitive Networks in Local Telecommunications Markets	)	WT Docket No. 99-217
Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception of Transmission Antennas Designed to Provide Fixed Wireless Services	)	
Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes and Assessments	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

REPLY COMMENTS OF AMERITECH

Ameritech respectfully submits the following reply comments in response to the Commission's recent Notice of Proposed Rulemaking in the above-captioned matter.[1]

[1] *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, etc*, WT Docket No. 99-217, CC Docket No. 96-98, Notice of Proposed Rulemaking, etc., FCC 99-141 (released July 7, 1999)("NPRM").

I. CLECs Enjoy the Same "Rights" As ILECs to Enter Buildings to Provide Services.

Several commenters attempt to create the perception of a dichotomy between incumbent carriers and new entrants in regard to the legal rights possessed by each to enter private property. For instance, AT&T states:

> An incumbent LEC almost always has the *legal right*, under state and local law, to enter a building to provide telephone service to the building occupants. By contrast, a new entrant most often does *not* have that right.[2]

This bold assertion is unsupported and necessarily so, as it is a wholly inaccurate characterization of the law in the states of the Ameritech region. In those states, incumbent carriers and new entrants have the same legal right to enter private property, namely, the power to condemn.[3] In fact, contrary to the picture painted by new entrants, the Ameritech operating companies have the same practical difficulties dealing with the owners of buildings in regard to access to tenants. This situation is due to the availability of competitive facility based providers, not to a disparity in legal rights. Building owners are seeking to leverage the newly competitive markets for facility based telecommunications to their advantage. This "leverage" is the source of building access problems: there is no disparity in legal rights. Nor is there an inherent incumbent carrier advantage under local law.

To the extent the Commission acts in this docket, it ought not to create rules based on a presumed difference in the legal rights of incumbent carriers compared to new entrants. At the very least, such rules should not apply in those states where there is no disparity in treatment between new entrants and incumbents.

---

[2] Comments of AT&T Corp., p. 4 (emphasis in Comments)

[3] See 220 ILCS 65/4 (Illinois); IRC 8-1-8-1 (Indiana); MCL 484.4 (Michigan) (Telecommunications companies do not have authority to condemn in the Lower Peninsula.); ORC secs. 4931.11 and 4931.04-.08 (Ohio); Wis. Stats. sec. 32.02(4) (Wisconsin).

II. Any Rules Made By the Commission Regarding Exclusive Contracts Should Apply Uniformly to All Carriers.

The Commission has stated:

> [I]t is important to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including both businesses and residential customers, regardless of where they live or whether they own or rent their premises. . . . To the extent that any class of consumers is unnecessarily disabled from choosing among competing telecommunications service providers, the achievement of this Congressional goal is placed in jeopardy.[4]

AT&T pays lip service to this goal[5] and demands that the Commission prohibit incumbent carriers from entering into exclusive contracts for access to tenants in MTEs.[6] Yet it would have the Commission exempt new entrants,[7] and cable television providers presumably even if the cable television operator is using its system to provide telephony, or "advanced services", such as high speed data services.[8] AT&T justifies this distinction on the fact that the Commission has historically subjected non-dominant carriers to minimal regulation. As AT&T itself notes, however, this minimal regulation of non-dominant carriers has been based on the premise that, if that carrier acts unreasonably, the customer can always obtain service from the dominant carrier. However, the analogy to

---

[4] *NPRM*, Par. 6, emphasis supplied.

[5] Comments of AT&T Corp., p. 2. Ameritech also questions the unsupported assertions of MCI WorldCom that "Building owners also often enter into exclusive arrangements with an incumbent carrier and refuse to grant access to CLECs." (Comments of MCI WorldCom, Inc., p. 2, emphasis supplied.) It is not Ameritech's practice to enter into exclusive contracts with building owners.

[6] Id., Section IV, pp. 25 – 30.

[7] Id., p. 27.

[8] Id., pps. 29-30. Several parties (See Comments of RCN;Comments of USTA, p. iii; Comments of Fixed Wireless Communications Coalition, p. 2)) have made cogent arguments that, in light of the convergence of telecommunications and cable television, the Commission ought to consider together its rules regarding MTE access and inside wire with a view to eliminating competitive discrepancies and fostering end user choice. Ameritech supports this request. As several commenters have attempted to show, rules that may be pro-competitive in the telecommunications market may be anti-competitive in the market for multichannel video programming distribution. For example, the extension of Section 224 to rights-of-way or easements on private property would effectively grant incumbent operators a federal "right to remain on the premises" and, thereby, undermine the cable inside wire transition process. See Comments of ICTA, p. 5; Comments of Optel, p. 2.

the dominant/non-dominant carrier regulation is inapposite here. If non-dominant carriers were permitted to enter into exclusive arrangements with building owners, *customers* would be deprived of the opportunity to choose to take service from the incumbent, thus eliminating the premise for affording non-dominant carriers differential minimal regulation.

Substituting the *building owner's* choice of provider for the *tenant-consumer's* choice does not advance the Commission's goals for this docket, as stated above – namely, bringing the benefits of competition to all *consumers*. Obviously, any exclusive arrangement in which a party other than the end user selects the consumer's service provider frustrates end user choice. There is no reason to believe that end users may not desire the ability to choose services from multiple providers, as is common with sophisticated business users today. Exclusive access arrangements – even those that favor new entrants -- by their nature foreclose that choice and frustrate the competitive process.

Nor is it a reasonable argument that exclusive contracts should be permitted for new entrants until competition is more fully developed. First, competition is already fully developed in many markets and in many locations. Second, the concept of prohibiting competition in the name of advancing it is oxymoronic – much akin to killing the patient to cure the disease. In fact, denying customers that right not only harms customers but is also antithetical to an open and efficient competitive process. If new entrants have a better product at a cheaper price, then they should have nothing to fear from a customer's right to choose.

Finally, under section 251(b)(4), it is an obligation of all local exchange carriers, not just incumbent local exchange carriers, to make access to the carrier's rights-of-way available to competing providers of telecommunications services. If building access

arrangements of incumbent carriers are "rights-of-way", then the arrangements of other carriers are "rights-of-way" too, unless the Commission is ready to determine that the identical words in sections 224 and 251(b)(4) have different meaning. Permitting exclusive access arrangements for new entrants would appear to directly conflict with the obligations of all local exchange carriers under sec. 251(b)(4).

Thus, there is simply no basis for treating incumbents and new entrants differently with respect to exclusive arrangements with building owners. Accordingly, any rule the Commission may adopt regarding exclusive access arrangements should apply equally to all carriers. That is the only way to advance true consumer, as opposed to carrier or building owner, choice.

Respectfully submitted,

Michael S. Pabian

Gerald A. Friederichs
Michael S. Pabian
Counsel for Ameritech
39th Floor
30 S. Wacker Dr.
Chicago, IL 60606
(312)750-5827

Dated: September 27, 1999

CERTIFICATE OF SERVICE

I, Grace Germain, do hereby certify that a copy of the Reply Comments of Ameritech has been served on all parties of record, via first class mail, postage prepaid, on this 27th[th] day of September, 1999.

By: Grace Germain
Grace Germain

JACK B. HARRISON
ATTORNEY FOR CINCINNATI BELL
TELEPHONE COMPANY
FROST & JACOBS LLP
201 EAST FIFTH STREET
CINCINNATI, OHIO 45202

M. ROBERT SUTHERLAND
THEODORE R. KINGSLEY
ATTORNEYS FOR BELLSOUTH CORP
1155 PEACHTREE STREE, N.E., SUITE 1700
ATLANTA, GEORGIA 30306-3610

ANDRE J. LACHANCE
GTE SERVICE CORP
1850 M STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20036

JOHN F. RAPOSA
GTE SERVICE CORP
600 HIDDEN RIDGE
HQE03J27
IRVING, TEXAS 75038

CHARLES C. HUNTER
CATHERINE M. HANNAN
ATTORNEYS FOR TELECOMMUNICATIONS
RESELLERS ASSOCIATION
HUNTER COMMUNICATIONS LAW GROUP
1620 I STREET, N.W., SUITE 701
WASHINGTON, D.C. 20006

DEBORHA C. COSTLOW
TREG TREMONT
ATTORNEYS FOR INDEPENDENT CABLE &
TELECOMMUNICATIONS ASSOCIATION
ARENT FOX KINTER PLOTKIN & KAHN
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

WILLIAM L. FISHMAN
KATHLEEN L. GREENAN
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K STREET, N.W., SUITE 300
WASHINGTON, D.C. 20007

LAWRENCE W. KATZ
ATTORNEY FOR THE BELL ATLANTIC TELEPHONE
COMPANIES
1320 NORTH COURT HOUSE ROAD
EIGHTH FLOOR
ARLINGTON, VIRGINIA 22201

KAREN NATIONS
METROMEDIA FIBER NETWORK SERVICES, INC
ONE MEADOWLANDS PLAZA
EAST RUTHERFORD, NJ 07073

LAWRENCE E. SARJEANT, LINDA KENT, KEITH
TOWNSEND, JOHN HUNTER, JULIE E. RONES
ATTORNEYS FOR UNITED STATES TELEPHONE ASC
1401 H. STREET, NW, SUITE 600
WASHINGTON, D.C. 20005

PHILIP L. VERVEER
GUNNAR D. HALLEY
ATTORNEYS FOR ASC FOR LOCAL
TELECOMMUNICATIONS SERVICES
WILLKIE FARR & GALLAGHER
SUITE 600
1155 21ST STREET, NW
WASHINGTON, D,C, 20036

JONATHAN M. ASKIN
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES
SUITE 900
888 17TH STREET, NW
WASHINGTON, D,C, 20006

MARK C. ROSENBLUM
STEPHEN C. GARAVITO
ATTORNEYS FOR AT&T CORP
295 NORTH MAPLE AVENUE
BASKING RIDGE, NEW JERSEY 07920

LAWRENCE FENSTER
MCI WORLDCOM
1801 PENNSYLVANIA AVE, NW
WASHINGTON, D.C. 20006

LEON M. KESTENBAUM
JAY KEITHLEY
NORINA T. MOY
ATTORNEYS FOR SPRINT CORP
1850 M ST., N.W., SUITE 1110
WASHINGTON, D.C. 20036

RICHARD MORRIS
CRAIG T. SMITH
ATTORNEYS FOR SPRINT CORP
7301 COLLEGE BLVD
OVERLAND PARK, KS 66210

W. KENNETH FERREE
ATTORNEY FOR OPTEL, INC
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, NW
WASHINGTON, DC 20036

MICHAEL E. KATZENSTEIN
VICE PRESIDENT AND GENERAL COUNSEL
FOR OPTEL, INC
1111 W. MOCKINGBIRD LAND
DALLAS, TX 75247

JOSEPH M. SANDRI, JR.
MEMBER REPRESENTATIVE FOR FIXED
WIRELESS COMMUNICATIONS COALITION
1300 NORTH 17TH STREET
11TH FLOOR
ARLINGTON, VIRGINIA 22209

CATHLEEN A. MASSEY
ATTORNEY FOR NEXTLINK COMM, INC
1730 RHODE ISLAND AVE, NW
SUITE 1000
WASHINGTON, DC 20036

PHILIP L. VERVEER
GUNNAR D. HALLEY
ATTORNEYS FOR ASC FOR LOCAL
TELECOMMUNICATIONS SERVICES
WILLKIE FARR & GALLAGHER
SUITE 600
1155 21ST STREET, NW
WASHINGTON, D,C, 20036

JONATHAN M. ASKIN
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES
SUITE 900
888 17TH STREET, NW
WASHINGTON, D,C, 20006

MARK C. ROSENBLUM
STEPHEN C. GARAVITO
ATTORNEYS FOR AT&T CORP
295 NORTH MAPLE AVENUE
BASKING RIDGE, NEW JERSEY 07920

LAWRENCE FENSTER
MCI WORLDCOM
1801 PENNSYLVANIA AVE, NW
WASHINGTON, D.C. 20006

LEON M. KESTENBAUM
JAY KEITHLEY
NORINA T. MOY
ATTORNEYS FOR SPRINT CORP
1850 M ST., N.W., SUITE 1110
WASHINGTON, D.C. 20036

RICHARD MORRIS
CRAIG T. SMITH
ATTORNEYS FOR SPRINT CORP
7301 COLLEGE BLVD
OVERLAND PARK, KS 66210

W. KENNETH FERREE
ATTORNEY FOR OPTEL, INC
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, NW
WASHINGTON, DC 20036

MICHAEL E. KATZENSTEIN
VICE PRESIDENT AND GENERAL COUNSEL
FOR OPTEL, INC
1111 W. MOCKINGBIRD LAND
DALLAS, TX 75247

JOSEPH M. SANDRI, JR.
MEMBER REPRESENTATIVE FOR FIXED
WIRELESS COMMUNICATIONS COALITION
1300 NORTH 17TH STREET
11TH FLOOR
ARLINGTON, VIRGINIA 22209

CATHLEEN A. MASSEY
ATTORNEY FOR NEXTLINK COMM, INC
1730 RHODE ISLAND AVE, NW
SUITE 1000
WASHINGTON, DC 20036

HOWARD J. SYMONS
UZOMA C. ONYEIJE
ATTORNEYS FOR NEXTLINK COMM., INC.
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEP, P.C.
701 PENNSYLVANIA AVE, NW
SUITE 900
WASHINGTON, D.C. 20004-2608

HENRY M. RIVERA]
LARRY S. SOLOMON
J. THOMAS NOLAN
ATTORNEYS FOR METRICOM, INC.
SHOOK, HARDY & BACON, LLP
600 14TH STREET, NW
WASHINGTON, D.C. 20005-0004

SCOTT MARIN
DIRECTOR OF REG AFFAIRS AND STANDARDS
1125 E COLLINS
RICHARDSON, TEXAS 75081

HARRY L. PLISKIN
FOR COMPETITION POLICY INSTITUTE
IRELAND, STAPLETON, PRYOR & PASCOE, P.C.
1675 BROADWAY, SUITE 2600
DENVER, COLORADO 80202

MARY MCDERMOTT
CHIEF OF STAFF AND SENIOR VP, GOVERNMENT RELATIONS
BRENT H. WEINGARDT
VP – GOVERNMENT RELATIONS
PERSONAL COMMUNICATIONS INDUSTRY ASC
500 MONTGOMERY STREET, SUITE 700
ALEXANDRIA, VA 22314-1561

ANDREA D. WILLIAMS
MICHAEL F. ALTSCHUL
RANDALL S. COLEMAN
CELLULAR TELECOMMUNICATIONS INDUSTRY
1250 CONNECTICUT AVE, NW
SUITE 800
WASHINGTON, D.C. 20036

ANDREW KREIG
PRESIDENT FOR WIRELESS COMMUNCATIONS
ASC INTERNATIONAL, INC
1140 CONNECTICUT AVE., NW
SUITE 810
WASHINGTON, D.C. 20036-4001

PHILLIP L. VERVEER
GUNNAR D. HALLEY
ATTORNEYS FOR TELIGENT, INC
WILLKIE FARR & GALLAGHER
THREE LAFAYETTE CENTRE
1155 21ST STREET, NW.W.
WASHINGTON, D.C. 20036

LAURENCE E. HARRIS
DAVID S TURETSKY
TERRI B NATOLI
ATTONEYS FOR TELEGENT, INC
SUITE 400
8065 LEESBURG PIKE
VIENNE, VA 22182

PHILLIP L. VERVEER
ANGIE KRONENBERG
SOPHIE J. KEEFER
ATTORNEYS FOR WINSTAR COMMUNICATIONS, INC
WILLKIE FARR & GALLAGHER
THREE LAFAYEET CENTRE
1155 21ST STREET, NW
WASHINGTON, D.C. 20036-3384

DONALD N. DAVID, ESQ
ATTORNEY FOR SHARED COMMUNICATIONS SERVICES, INC
FISCHBEIN BADILLOW WAGNER HARDING
909 THIRD AVENUE
NEW YORK, NY 10022

RICHARD S LIPMAN
ATTORNEY FOR MCLEODUSA
MCLEODUSA TECHNOLOGY PARK
6400 C STREET SW
CEDAR RAPIDS, IA 52406-3177

ANTHONY J. MORDOSKY
PRESIDENT FOR THE ASC FOR TELECOMMUNICATIONS PROFESSIONALS IN HIGHER ED
152 WEST ZANDALE DRIVE, SUITE 200
LEXINGTON, KY 40503

PATRICK J. BRADLEY
PRESIDENT FOR THE ASC OF COLLEGE UNIVERSITY HOUSING OFFICERS INTERNATIONAL
364 WEST LANE AVENYE, SUITE C
COLUMBUS, OH 43201-1062

LANDER MEDLIN
DIRECTOR OF THE ASC OF HIGHER ED FACILITIES OFFICERS
1643 PRINCE STREET
ALEXANDRIA, VA 22314-2818

BRIAN HAWKINS
PRESIDENT, EDUCAUSE
1112 16TH ST NW SUITE 600
WASHINGTON, DC 20036

TERRY LEWIS, ESQ
COOPERATIVE HOUSING COALITION
1401 EYE ST., NW STE 700
WASHINGTON. DC 20005

MATTHEW C AMES
NICHOLAS P MILLER
WILLIAM MALONE
MARCO L FRISCHKORN
ATTORNEYS FOR BUILDING OWNERS AND MANAGERS ASC.
MILLER AND VAN EATON PIIC
SUITE 1000
1155 CONNECTICUT AVE
WASHINGTON DC 20036-4306

ANDREW D LIPMAN
PATRICK DONOVAN
ATTORNEYS FOR BLUESTAR COMM., INC.
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K STREET, NW SUITE 300
WASHINGTON, DC 20007

PATRICIA PAOLETTA
WILLIAM P. HUNT 111
LEVEL 3 COMMUNICATIONS, LLC
1025 ELDORADO DRIVE
BROOMFIELD, CO 80021